

## ***Town of Stow***

### ***Chapter 61 Review Process Guidelines***

Whereas the Town of Stow ("Town") encourages owners of open lands used for forestry, farming or recreation to enroll their property in the Chapter 61, 61A and 61B preferential tax programs in order to help maintain these lands in their current use, but in doing so, forgoes tax revenue that would otherwise be generated by these lands; and

Whereas owners of land enrolled in these programs are required to grant the Town a 120-day assignable right of first refusal in the event that these lands are proposed to be sold or converted for other uses; and

Whereas the Town has the ability to exercise its right of first refusal on land sold for, or converted to, another use within one year of leaving Chapter 61, 61A and 61B; and

Whereas the Town has ongoing needs for land for municipal purposes including conservation land and finds it in the Town's best interest to give full consideration to the opportunity presented by withdrawal of land from these programs, to gather information from relevant boards and staff, and to determine whether the Town should exercise or assign its right of first refusal;

Whereas the Town has formed a "Study/Evaluation Group", composed of the professional staff of the Stow Planning Board, Stow Board of Selectmen, Stow Conservation Commission, Board of Assessors, Stow Board of Health, and the Chairs or designees Stow Open Space Committee and Stow Agricultural Commission (to assist the Town in evaluating parcels and completing the right of first refusal process.

Therefore the Board of Selectmen adopts these Chapter 61 Guidelines to set forth a clear process by which the Town will review and respond to notices of conversion and sale of lands in Chapters 61, 61A and 61B and determine whether to exercise, assign or waive its right of first refusal on these lands. These guidelines and procedures are adopted solely for the purposes of coordinating local review. Failure to adhere to these guidelines and procedures shall not affect any rights that the Town has under MGL Chapters 61, 61A and 61B, nor shall they affect any rights of the landowner.

**Note: For the purposes of this document, the following items that are required by statute are noted in italic type. This is not an exact replication of the wording of the statute. Other items are adopted as part of this set of guidelines. The statute should always be consulted for exact wording.**

## **A. Right of First Refusal**

*Within 120 days of the landowner's mailing (not receipt) of a proper notice, the Town must either:*

- 1. Act to exercise its option to purchase (to meet a bona fide purchase offer or, in the case of intended conversion by the landowner, an option to purchase at full and fair market value), recorded at the Registry of Deeds and by certified mail notification to the landowner,*
- 2. Assign its rights to a non-profit conservation organization or the Commonwealth or any of its political subdivisions, recorded at the Registry of Deeds, or*
- 3. Notify the property owner that it does not intend to exercise its right of first refusal.*
- 4. Failure to record either the notice of exercise (and notification of the landowner) or the notice of assignment within 120 days is considered conclusive evidence that the Town will not exercise its right of first refusal.*

## **B. Requirements for Notice by Property Owner**

- 1. The 120-day right of first refusal time period begins with a notice of the landowner's intent to sell or convert a parcel for commercial, industrial or residential use. This notice must be sent by certified mail or hand delivered to the Town of Stow Board of Selectmen, in addition to the Planning Board, Board of Assessors and Conservation Commission, and to the State Forester. This notice must include the following:*
  - a. A statement of intent to sell or convert,*
  - b. A statement of proposed use of the land,*
  - c. The location and acreage of land as shown on a map drawn at the scale of the Town's Assessor's maps*
  - d. The name, address and telephone number of the landowner,*
  - e. In the case of an intent to sell, a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited only to the property classified under the Chapter, and must be a bona fide offer,*
  - f. The purchase and sale agreement must be a bona fide offer, defined as a good faith offer not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of, development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed,*
  - g. Any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under the Chapter, but sold or to be sold contemporaneously with the proposed sale,*
  - h. A notarized affidavit that the landowner has mailed or delivered the notice will be conclusive evidence that the notice has been mailed in the manner and at the time specified,*
  - i. In the case of an intent to convert the land to other use, the landowner must also notify the Town of the landowner's attorney, if any.*

**C. Procedure for Review of Notices and Evaluation of Properties**

1. Within three days of receipt of a proper Notice from a landowner, the Board of Selectmen's office will ascertain that Notice, with the required information, was also properly transmitted to the Planning Board, Board of Assessors and Conservation Commission. Within this same period, copies of the Notice will be provided by the Board of Selectmen's Office to members of the Study/Evaluation Group and to the Town Clerk, the Community Preservation Committee, Historic Commission, Stow Municipal Affordable Housing Trust, Stow Conservation Trust, and any other relevant boards and town officials. A cover letter shall indicate the date of a Joint Boards meeting to be scheduled within three weeks of the receipt of the Notice. The Board of Selectmen's office will provide a copy of the Notice and relevant information to Town Counsel for review.
2. The Board of Selectmen's office will also determine the final day of the 120-day period in consultation with Town Counsel and attempt to seek confirmation from the landowner or his/her representative regarding this date.
3. The Board of Selectmen will consult with Town Counsel to review the notice, including the purchase and sale agreement, and determine whether the purchase and sale agreement is deemed a bona fide offer and whether the Town is being given the same opportunity as the buyer with regard to the terms of the agreement. Ideally this determination will be made within five (5) days of receipt of the Notice.
4. *If the Notice is determined to be insufficient, the Board of Selectmen will immediately, but, in no event, in no later than 30 days from receipt of the Notice, transmit a letter via certified mail notifying the landowner in writing that the proper notice has not been given and informing him/her that the 120-day time period pursuant to the statute has not begun. A copy of this letter will be provided to the Planning Board, Board of Assessors and Conservation Commission and other boards/officials in Paragraph C(1). Unless or until there is agreement with the landowner that the notice is deficient or the offer is not bona fide, the Town's review process should continue.*
5. The Board of Selectmen shall request that the Study/Evaluation Committee gather information on the property to determine its recreational, agricultural, forestry and/or conservation values and provide a preliminary report to the Board of Selectmen and Town Administrator within five (5) working days. An analysis of the location of the property relative to other protected lands shall be performed along with an environmental assessment. A determination will be made whether the property contains any unique geological or other environmental features, important soils, a drinking water source, or historical attributes. Zoning and subdivision control regulations will be examined to assess the impact of the potential development on town services.
6. The Board of Selectmen shall hold a Joint Boards meeting, inviting all relevant municipal boards and committees. At that meeting, the information gathered by the Study/Evaluation Committee shall be presented and all boards and committees shall be given the opportunity to present any additional information that may be relevant to the parcel and indicate their potential interest in pursuing exercise of the Town's right of first refusal and the potential of the property to meet the town's needs for land.
7. At the conclusion of the Joint Boards meeting, the Board of Selectmen shall determine whether or not there is interest in proceeding with further evaluation of the property. At that time, if there is no interest, the Board may execute a waiver of the Town's right of first refusal (see D.3 below). If there is interest in further evaluation, the Board shall request that the Town Administrator appoint a Working Group to conduct further evaluation of the property and bring one or more proposals for the use of the property and the funding for the

acquisition to the Board of Selectmen. The membership of the Working Group will likely include members of the Study/Evaluation group but shall be as broad as needed to include all parties with an interest in pursuing acquisition of the property. The working group shall complete any necessary evaluations of the land's suitability for intended uses. The group may request funds to cover costs of the evaluations from public or private sources as they deem necessary.

8. At the conclusion, of the Joint Boards meeting, The Board of Selectmen shall meet and if they decide to continue the process., they shall also schedule and give notice of a public hearing for the purpose of receiving comments on the importance of the property to the Town, its conservation significance and/or potential for use to serve municipal needs and for receiving a report from the Working Group. Ideally, the public hearing will be scheduled by Day 60 of the review process. In those cases where there is a proposed conversion of the land but no sale, the determination of sale price may take as long as 90 days, at which point the public hearing will be scheduled (see section C (7)). *Notice of the hearing is required to be given in accordance with M.G.L. Ch. 39, Section 23B (Open Meeting Law).* The Board of Selectmen will also notify the Planning Board, Conservation Commission, Open Space Committee and Board of Assessors, and (the other boards and organizations listed in paragraph C (1)). *The option to exercise the right of first refusal may only occur after a public hearing and an affirmative vote of the Board of Selectmen.*

At the public hearing, the Board of Selectmen will afford interested boards, organizations and individuals the right to comment. If there continues to be interest in pursuing acquisition of the property for municipal uses or in assigning the right of first refusal to a non-profit conservation organization or to the Commonwealth or one of its political subdivisions, the Board of Selectmen may continue the public hearing as needed to allow time to present a more specific proposal for consideration by the Board.

9. *If the landowner is converting the property, and the Town is interested in exercising an option to purchase the land at fair market value, the Town will hire a qualified independent appraiser, and obtain the appraisal within 30 days of receiving the notice to convert. If the landowner contests the appraisal, the landowner may hire a qualified independent appraiser and obtain an appraisal within 60 days of the notice to convert. If the Town and the landowner cannot agree on an appraised value, then the two parties will jointly hire a third appraiser and obtain an appraisal within 90 days of the notice to convert. The price of the third appraisal will prevail if there is a sale, but at anytime the landowner may withdraw his or her notice to convert. Upon agreement of a sales price, the Town will have 120 days to exercise its option.*

#### **D. Decision by the Town of Stow**

Based on input at the public hearing and further research as warranted, the Board of Selectmen will close the hearing and determine whether to pursue the opportunity to exercise the right of first refusal and for what purposes. The Board of Selectmen must choose one of four courses of action:

1. If the Board of Selectmen agrees to bring the option to exercise to a Town Meeting vote, the Board of Selectmen shall:
  - Schedule a Town Meeting for the purpose of appropriating funds to purchase the property, place a warrant article on the town warrant for this purpose, and schedule a debt exclusion vote (if necessary) for the purpose of authorizing expenditure of funds. The town meeting must be scheduled within the statutory 120-day period, unless an extension of this deadline is agreed to in writing between the parties.

- *Record the notice to exercise the option at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.*
  - *Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the Town's intent to exercise its option.*
  - *The Town must take title to the property must occur within 90 days of the Town's decision to exercise its right of first refusal, unless otherwise extended by written agreement of the parties.*
2. If the Board of Selectmen desires to assign its right of first refusal to a qualified land trust/conservation agency, the Board of Selectmen shall:
- *At a public hearing during the 120-day period, vote to assign its right of refusal to the non-profit organization, setting forth any terms and conditions of the assignment. [Note: the non-profit conservation organization or the Commonwealth or any of its political subdivisions must conserve at least 70% of the property in a use consistent with one of the three Chapters, (forestry, agriculture or recreation) or no less a percentage conserved than proposed by the developer whose offer gave rise to the assignment, whichever is greater, but may be permitted to undertake a limited development on the balance of the property. The Board of Selectmen may place conditions on this use; for example the number of lots in the limited development can be specified.]*
  - *Record the notice to exercise at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.*
  - *Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the Town's intent to assign its option to a non-profit conservation organization, stating the name and address of the non-profit organization and the terms and conditions of the assignment.*
  - *The assignee must take title to the property within 90 days of the Town's decision to assign its right of first refusal, unless otherwise extended by written agreement of the parties.*
3. If the Town decides to forgo its right of first refusal, the Board of Selectmen should:
- *Examine wisdom of recording a limited waiver of its rights at the Registry of Deeds. Any waiver of the Town's rights should be specific to the proposed purchase terms so that if the sale falls through and a new proposal comes forth, the 120-day clock will begin again.*
  - *The Town shall use as much of the 120-day period as is necessary to properly evaluate the property and the potential of exercising or assigning the right of first refusal. It is possible that the Town may decide that it cannot afford to purchase the property, but any such choice should be thoroughly discussed and researched before making such a determination. Where there is consensus on the absence of conservation value or where the Town has negotiated a signed agreement with the landowner and/or developer that meets the municipal needs with regard to the property, the town may choose not to exercise its right. Any such negotiations, however, should occur in consultation with the boards/committees entitled to notice by statute.*
4. *The Town can fail to act within the required 120-day period (and any extensions thereof), in which case the Town will be deemed to have failed to exercise its right of first refusal.*